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Boynton Beach, FL 33436

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**NOV 16 2005**

**OFFICE OF PETITIONS**

In re Application of  
Paul B. McKee  
Application No. 10/614,705  
Filed: July 7, 2003  
For: Dual Flush Toilet Valve

**DECISION ON PETITION**

This is a decision on the petition filed on October 6, 2005, and again on October 13, 2005, which is being treated as a feeless petition under 37 CFR 1.181, to withdraw the holding of abandonment.

On December 14, 2004, the USPTO mailed petitioner a nonfinal Office Action, which set a three-month shortened statutory period for reply. On January 14, 2005, petitioner submitted an amendment in response to the nonfinal Office Action. On February 10, 2005, the USPTO mailed petitioner a Notice of Non-Compliant Amendment, stating that the amendment to the claims filed on January 14, 2005, is considered non-compliant because it failed to meet the requirements of 37 CFR 1.121. The Notice set a one-month extendable period from the mailing of the Notice within which to submit a compliant amendment. On March 11, 2005, the application became abandoned for failure to submit a timely reply to the Notice of Non-Compliant Amendment. On September 2, 2005, the USPTO mailed petitioner a Notice of Abandonment.

***PETITION UNDER 37 CFR 1.181:***

In the present petition, petitioner stated: "I have no intention of abandonment but every request for change does not seem to get thru to him (Robert Fetsuga – Examiner). I have made every change that he has asked for and sent back to him within 7 days." Petitioner further stated that he sent a package to the examiner on September 9, 2005, but the package was returned to him. Petitioner submitted a copy of the returned envelope, addressed to the USPTO at an address no longer in use, as well a copy of his previous letters to the examiner.

After reviewing the documents submitted by petitioner and the application file, it appears that the USPTO did indeed receive petitioner's previous letters to the examiner. However, it does not appear that any of these letters included an amendment in compliance with 37 CFR 1.121. Moreover, petitioner did not submit a compliant amendment in response to the Notice of Non-Compliant

Amendment with the present petition. A copy of the Notice of Non-Compliant Amendment dated February 10, 2005, and a written explanation of the amendment format required by 37 CFR 1.121 accompany this decision for petitioner's convenience.

In view of the above, the petition to withdraw the holding of abandonment is **dismissed**.

The Office strongly suggests that petitioner file a petition under 37 CFR 1.137(b) to revive the application. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) The required reply to the outstanding Notice of Non-Compliant Amendment in the form of an amendment in compliance with 37 CFR 1.121.

(2) **The petition fee in the amount of \$750.00;**

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

For petitioner's convenience, a form for filing a petition under 37 CFR 1.137(b) is enclosed.

Before the application can be revived, petitioner must submit a completed petition form, a \$750.00 fee, and a compliant amendment to the USPTO as indicated below. Petitioner may wish to seek the advice of a registered patent attorney or agent to assist him in this matter and in prosecuting this application. Additionally, petitioner may wish to contact the Inventors Assistance Center at 800-786-9199 or 571-272-1000.

Correspondence with respect to this matter should be addressed as follows:

By mail:      Mail Stop Petition  
                 Commissioner for Patents  
                 P.O. Box 1450  
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By FAX:        (571) 273-8300  
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By hand:       Customer Service Window  
                 Randolph Building  
                 401 Dulany Street  
                 Alexandria, VA 22314

Telephone inquiries should be directed to the undersigned at (571) 272-3211.

*Christina Tartera Donnell*

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Office of Petitions

Enclosures: PTO/SB/64 - Petition For Revival Of An Application For Patent Abandoned  
Unintentionally, Privacy Act Statement, Notice of Non-Compliant Amendment, and Revised  
Amendment Practice Flyer